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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Austria, Belgium*, Bulgaria*, Canada, Cyprus*, Czech Republic, Denmark, Estonia*, Finland*, France, Germany, Greece*, Hungary*, Iceland*, Ireland, Italy, Latvia*, Liechtenstein*, Lithuania*, Luxembourg, Netherlands*, Norway*, Poland, Portugal*, Romania*, San Marino*, Slovakia*, Slovenia*, Spain*, Sweden*, Switzerland*, United States of America, United Kingdom of Great Britain and Northern Ireland: draft resolution

1998/... Situation of human rights in Myanmar

The Commission on Human Rights,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,

Aware that the Universal Declaration of Human Rights states that the will of the people shall be the basis of the authority of government,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Mindful that Myanmar is a party to the Convention on the Rights of the Child and the Geneva Conventions of 1949 on the protection of victims of war,

Recalling previous resolutions of the General Assembly and the Commission on Human Rights on the subject, most recently Assembly resolution 52/137 of 12 December 1997 and Commission resolution 1997/64 of 16 April 1997,

1. Welcomes:

(a) The report of the Special Rapporteur (E/CN.4/1998/70) and the report of the Secretary General (E/CN.4/1998/163);

(b) The cooperation by the Government of Myanmar with the Office of the United Nations High Commissioner for Refugees and international non-governmental organizations with respect to the voluntary repatriation and reintegration of returnees from Bangladesh, and takes note of the role of the United Nations Children's Fund in the promotion in Myanmar of the Convention on the Rights of the Child;

(c) The accession of the Government of Myanmar on 22 July 1997 to the Convention on the Elimination of All Forms of Discrimination against Women;

(d) The visits to Myanmar by the Special Envoy of the Secretary-General in May 1997 and following the Secretary-General's meeting with Senior General Than Shwe, in January 1998, for the purpose of discussions with the Government and with Aung San Suu Kyi and other political leaders;

(e) The remission of sentences for some long-term prisoners announced by the Government of Myanmar in December, and calls for this to be widened to include prisoners imprisoned for their peaceful political activities;

(f) The holding of the Party Congress of the National League for Democracy in September 1997 and subsequent meetings marking Myanmar's National Day, Independence Day and Union Day;

2. Expresses its deep concern:

(a) At the continuing violations of human rights in Myanmar as reported by the Special Rapporteur, including extrajudicial, summary or arbitrary executions and enforced disappearances, torture, abuse of women and children by government agents, arbitrary seizures of land and property, violations of freedom of movement of people and goods, and the imposition of oppressive measures directed in particular at ethnic and religious minorities, including systematic programmes of forced relocation;

(b) At the widespread use of forced labour, including work on infrastructure projects and as porters for the army;

(c) At the severe restrictions on the freedoms of opinion, expression, assembly and association, at the restrictions on citizens' access to information including censorship controls on all forms of domestic media and many international publications, and at the restrictions imposed on citizens wishing to travel abroad including the denial of passports on political grounds, and at the continued closure of most institutions of higher education for political reasons;

(d) At the absence of due process of law, including arbitrary arrest and politically motivated arrest and detention, the detention of prisoners without trial and the trial of detainees in secrecy without proper legal representation, and at the inhuman treatment of prisoners, leading to illness and deaths in custody;

(e) At the violation of the rights of women, especially women belonging to ethnic minorities and members of the political opposition, particularly sexual violence and exploitation, including systematic rape, pregnancies resulting from rape and sexual enslavement;

(f) At continuing violations of the rights of children in contravention of the Convention on the Rights of the Child, in particular by the lack of conformity of the existing legal framework with the Convention, by recruitment of children into forced labour programmes and into the armed forces and by discrimination against children belonging to ethnic and religious minority groups;

(g) That the human rights situation in Myanmar, including the systematic programmes of forced relocations directed against ethnic minorities, notably in Karen, Kayan, Rakhine and Shan States and in Tennasserim Division, has resulted in displaced persons and flows of refugees to neighbouring countries, thus creating problems for the countries concerned, and deplores recent attacks on refugee camps on the border between Thailand and Myanmar;

(h) That the Government of Myanmar still has not implemented its commitment to take all necessary steps towards democracy in the light of the democratic elections of 1990, while noting that the absence of respect for the rights pertaining to democratic governance is at the root of all major violations of human rights in Myanmar;

(i) That the Government of Myanmar refuses to cooperate with and has not yet agreed to a visit by the Special Rapporteur;

(j) That most of the representatives duly elected in 1990 are still excluded from participating in the meetings of the National Convention, created to prepare basic elements for the drafting of a new constitution, and that one of the objectives of the National Convention is to maintain the participation of the armed forces in a leading role in the future political life of the State, and notes also with concern that the composition and working procedures of the National Convention do not permit the elected representatives of the people freely to express their views, and concludes that the National Convention does not appear to constitute the necessary steps towards the restoration of democracy;

(k) At the restrictions placed upon political leaders, particularly Daw Aung San Suu Kyi, at the continued harassment, arrest and detention of members and supporters of the National League for Democracy and other democratic groups, students, trade unionists and members of religious orders for peacefully exercising their right to freedom of expression, assembly and association, and at the harsh sentences imposed on supporters of the National League for Democracy in December 1997, and at the forced resignations of elected representatives;

(l) At the failure of the Government of Myanmar to engage in a substantive political dialogue with Daw Aung San Suu Kyi and other political leaders, including representatives of ethnic groups, although very limited contacts between the Government of Myanmar and the National League for Democracy have taken place;

(m) At the imprisonment of members of the National League for Democracy, among others, and restrictions which have substantially disrupted legitimate gatherings of the National League for Democracy;

3. Calls upon the Government of Myanmar:

(a) To guarantee an end to violations of the right to life and integrity of the human being and to ensure full respect for human rights and fundamental freedoms, including freedoms of thought, opinion, expression, association and assembly, the right to a fair trial by an independent and impartial judiciary and the protection of the rights of persons belonging to ethnic and religious minorities;

(b) To take urgent and meaningful measures to ensure the establishment of democracy in accordance with the will of the people as expressed in the democratic elections held in 1990 and, to this end, to engage immediately and unconditionally in substantive dialogue with the leaders of political parties, including Daw Aung San Suu Kyi, and with leaders of ethnic groups, with the aim of achieving national reconciliation and restoration of democracy, and to ensure that political parties and non-governmental organizations can function freely;

(c) To take all appropriate measures to allow all citizens to participate freely in the political process, in accordance with the principles of the Universal Declaration of Human Rights, and to accelerate the process of transition to democracy, in particular through the transfer of power to democratically elected representatives;

(d) Urgently to improve conditions of detention and to allow the competent international humanitarian organization to communicate freely and confidentially with prisoners;

(e) To cooperate fully and unreservedly with the relevant mechanisms of the Commission, in particular with the Special Rapporteur, and to ensure his access to Myanmar in order to establish direct contact with the Government and with any person in the country whom he may deem appropriate, to allow him fully to discharge his mandate;

(f) To continue to cooperate with the Secretary-General or his representatives and to broaden this dialogue, including through access to any person deemed appropriate by the Secretary-General, and to implement their recommendations;

(g) To ensure the safety and physical well-being of all political leaders, including Daw Aung San Suu Kyi, and to permit unrestricted communication with and physical access to Aung San Suu Kyi and other political leaders, and to release immediately and unconditionally those detained for political reasons, to ensure their physical integrity and to permit them to participate in a meaningful process of national reconciliation;

(h) To fulfil its obligations under the Convention on the Rights of the Child, including as set out in the concluding observations of the Committee on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women and to consider becoming a party to the International Covenant on Civil and Political Rights, the International

Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention relating to the Status of Refugees, as well as to other human rights instruments;

(i) And all other parties to the hostilities in Myanmar to respect fully their obligations under international humanitarian law, including article 3 common to the Geneva Conventions of 12 August 1949, to halt the use of weapons against the civilian populations, to protect all civilians, including children, women and persons belonging to ethnic or religious minorities, from violations of humanitarian law and to avail themselves of services offered by impartial humanitarian bodies;

(j) To fulfil its obligations as a State party to the Forced Labour Convention, 1930 (No. 29) and to the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the International Labour Organization and to cooperate more closely with the International Labour Organization, in particular with the Commission of Inquiry appointed in accordance with article 26 of the Constitution of the International Labour Organization;

(k) To end the enforced displacement of persons and other causes of refugee flows to neighbouring countries and to create conditions conducive to their voluntary return and full reintegration in safety and dignity including, where these are lacking, rights of full citizenship, in close cooperation with the Office of the United Nations High Commissioner for Refugees;

(l) To fulfil its obligations to end impunity of perpetrators of human rights violations, including members of the military and to investigate and prosecute alleged violations committed by government agents in all circumstances;

(m) To investigate the circumstances which led to the death in June 1996 of Mr. James Leander Nichols while detained by the Government of Myanmar and to prosecute the person or persons responsible;

4. Decides:

(a) To extend the mandate of the Special Rapporteur, as contained in Commission resolution 1992/58 of 3 March 1992, for a further year, and requests the Special Rapporteur to submit an interim report to the

General Assembly at its fifty-third session and to report to the Commission at its fifty-fifth session, and to keep a gender perspective in mind when seeking and analysing information;

(b) To request the Secretary-General to continue to give all necessary assistance to the Special Rapporteur to enable him to discharge his mandate fully and to pursue all efforts to ensure that the Special Rapporteur is authorized to visit Myanmar;

(c) To request the Secretary-General to continue his discussions with the Government of Myanmar and anyone he may consider appropriate in order to assist in the implementation of General Assembly resolution 52/137 and of the present resolution;

(d) To continue its consideration of this question at its fifty-fifth session.